



## THE FEDERAL STORM WATER PROGRAM FREQUENTLY ASKED QUESTIONS



### 1. HOW DO CONSTRUCTION ACTIVITIES AFFECT STORM WATER RUNOFF QUALITY?

Storm water runoff consists of rainwater and melted snow that runs off the land and enters surrounding surface waters. Construction activities—like clearing, grading, and excavation—expose soil surfaces and change natural water runoff patterns, which increase soil erosion. Storm water runoff carries loose particles (i.e., sediment) from construction projects to lakes, rivers, streams, and ponds. Gradually, layers of clay and silt build up in the streambeds and cover areas where fish spawn and aquatic plants grow. Thus, the U.S. Environmental Protection Agency (EPA) considers sediment a pollutant. In addition, some construction activities require the use of toxic chemicals, metals, oil, and other materials that may contaminate the storm water running off a job site.

### 2. WHAT TYPES OF CONSTRUCTION ACTIVITIES REQUIRE A PERMIT?

In 1987, Congress amended the Clean Water Act (CWA) to require implementation, in two phases, of a comprehensive national program to control pollutants that enter the “waters of the United States” via storm water runoff. The storm water program is part of the National Pollutant Discharge Elimination System (NPDES) permit program, which was established by the CWA in 1972 to regulate point source discharges from municipal and industrial sources, including certain construction activities.

EPA finalized the first phase of the storm water program on November 16, 1990 (55 FR 47990). Currently, Phase I requires permits for storm water discharges from construction activities that disturb five or more acres of land to surface waters or into a municipal separate storm system (MS4). Storm water discharges from activities disturbing less than five acres also must be covered by a Phase I permit if they are part of a “larger common plan of development or sale” that is five acres or greater.

The second phase of the storm water program (called Phase II), which was finalized on December 8, 1999 (64 FR 68722), requires permits for storm water discharges from construction sites that disturb between one and five acres of land to surface waters or into an MS4. However, the Phase II permits have not yet been written (*see Phase II implementation schedule below*). Storm water discharges from activities disturbing less than one acre also are covered under Phase II if they are part of a “larger common plan of development or sale” with a planned disturbance of one acre or greater.

EPA or a state storm water permitting authority may choose to waive the Phase II permit requirements in two situations: (1) where little or no rainfall is expected during the construction period; and (2) when a total maximum daily load or equivalent analysis indicate that controls on construction site discharges are not needed to protect water quality.

### **3. WHEN WILL PHASE II OF THE STORM WATER PROGRAM BE FULLY IMPLEMENTED?**

The Phase II rule requires EPA and state permitting authorities to issue general permits for small construction sites by December 2002. By March 2003, previously unregulated operators must obtain storm water permits for discharges from small construction sites that disturb between one and five acres to surface waters or into an MS4. *For more information, see EPA's Phase II "fact sheets" on AGC's Environmental Service webpage at [www.constructionenvironment.org](http://www.constructionenvironment.org), or call EPA's Storm Water Phase II Hotline at (202) 260-5816.*

### **4. WHAT AGENCY IS THE PERMITTING AUTHORITY IN MY STATE?**

Storm water permits may be issued through one of EPA's ten regional offices or through an authorized state agency. Currently, federal EPA administers the storm water program in less than ten states. One national and two regional EPA federal construction general permits (CGPs) exist. EPA's national CGP (63 FR 7898, Feb. 14, 1998) applies in the states of Alaska, Arizona, Idaho, Maine, Massachusetts, New Hampshire, Puerto Rico, and Washington, DC, and on various Indian lands and federal facilities throughout EPA Regions 1, 2, 3, 5, 7, 8, 9 & 10. The EPA Region 4 CGP (65 FR 25141, April 28, 2000) applies in the state of Florida and on Indian lands in Alabama, Florida, Mississippi, and North Carolina. The Region 6 CGP (63 FR 36490, July 6, 1998) applies in the states of New Mexico and Texas, as well as on most Indian lands in Louisiana, Oklahoma, Texas, and New Mexico, and on oil and gas construction projects in Oklahoma state. *The storm water contacts at EPA Headquarters and at all ten EPA Regional Offices are listed on AGC's Environmental Services webpage at [www.constructionenvironment.org](http://www.constructionenvironment.org) (click on the "Water Resources" link).*

Throughout most of the nation, however, EPA has delegated the storm water program to the states to administer as they see fit, so long as minimum federal permit requirements are met. *AGC has compiled a directory of state environmental agencies that are responsible for issuing storm water construction permits. Each state agency's contacts are available on AGC's Environmental Services webpage at [www.constructionenvironment.org](http://www.constructionenvironment.org) (click on the "Water Resources" link) or call AGC's Melinda L. Tomaino at (703) 837-5415.*

### **5. WHO IS RESPONSIBLE FOR APPLYING FOR STORM WATER PERMIT COVERAGE?**

In most cases, the property owner and the general contractor will each be required to obtain permit coverage. EPA's explanation of this issue is that the "operator" of a construction site is required to submit the permit application. The storm water regulations define "operator" as the party or parties that: (1) have operational control over the construction plans and site specifications, including the ability to change those plans; and (2) have day-to-day operational control of those activities at the site necessary to ensure compliance with storm water pollution prevention plan and permit conditions (i.e., authority to direct workers at the site to carry out activities identified in the plan). EPA notes that in most circumstances separate parties will carry out these control functions.

Since 1992, the operators of construction activities disturbing greater than five acres have been required to obtain storm water permit coverage under Phase I. Previously unregulated operators of small construction activities that result in a land disturbance of between one and five acres in size are automatically subject to Phase II requirements. However, the permit applications covering small construction sites will not be due until early 2003.

#### **6. HOW DOES A CONSTRUCTION SITE OPERATOR START AND STOP COVERAGE UNDER A STORM WATER PERMIT?**

EPA and the states administer the storm water permit program through the use of general permits. In other words, instead of issuing an individual permit for each specific site, EPA and the states have established generic requirements for sediment and erosion control, storm water management, and other controls. In areas where EPA is not the permitting authority, other types of construction storm water permits may exist. *To find out more, check with the appropriate state agency contact listed on AGC's Environmental Services webpage.*

Initially, the construction site operator must obtain a copy of the construction general permit that applies in the state where the construction activity will occur. To apply for coverage under a general storm water permit the site operator(s) must submit an application form to the permitting authority—at least 48 hours prior to disturbing soil—indicating an intention to follow the requirements of the general permit. The form, typically called a notice of intent (NOI), contains information about the site including: site location, operator information, receiving water(s), brief description of the project, and a certification that a storm water pollution prevention plan has been developed and will be implemented. Signing the NOI form obligates the operator to comply with the terms of the permit. In most cases, no permit will actually be issued. Unless contacted by EPA or the state, construction activities can commence after submittal of the NOI by the set deadline.

In most states, a notice of termination (NOT) form must be submitted to the appropriate permitting authority in order to terminate coverage. A construction site operator may submit an NOT when: disturbed soils at the construction site have finally been stabilized (i.e., 70 % of the vegetative groundcover has been replaced) and temporary erosion and sediment control measures have been removed; storm water discharges have been eliminated; or the permittee is no longer an operator of the site.

#### **7. HOW DOES A SITE OPERATOR OBTAIN THE CORRECT STORM WATER PERMIT AND APPLICATION/TERMINATION FORMS?**

EPA CGPs and NOI/NOT forms may be obtained online at <http://www.epa.gov/npdes/stormwater> or by calling the Water Resources Center at (202) 260-7786. State permits and NOI/NOT forms may be obtained by contacting the appropriate state agency or, in most instances, by visiting the state agency's website on the Internet.

*AGC has compiled a directory of state agency storm water contacts, including website links that will take you to online permits and forms, provided the information is available on the Internet. Log on to AGC's Environmental Services webpage at [www.constructionenvironment.org](http://www.constructionenvironment.org) and click on the "Water Resources" link to take advantage of this resource.*

## **8. IN SHORT, WHAT ARE THE FEDERAL STORM WATER PERMIT REQUIREMENTS?**

Regardless of who issues the permit, the standards set forth must, at a minimum, agree with the federal version of the permit. Generally, EPA's existing construction general permit, which authorizes storm water discharges from construction sites disturbing five acres or more, includes requirements to:

- Develop and implement a storm water pollution prevention plan (SWPPP). The SWPPP includes erosion and sediment controls, self-inspection/monitoring, and reporting efforts.
- Submit a notice of intent (NOI) to the permitting authority. The NOI must be filed at least 48 hours before construction begins.
- Conduct regular inspections and report releases of "reportable quantities" of hazardous substances.
- Submit a notice of termination (NOT) when permit coverage is no longer necessary.

States can create more stringent requirements or alter certain procedures associated with the permitting process. As a result, the program will vary from state to state and contractors must be familiar with the specific requirements in the states where they work. For instance, some states currently require storm water permits for activities disturbing less than five acres. In addition, deadlines for submitting NOI forms will vary from state to state. EPA expects the Phase II permits for small construction activities to be similar to the existing storm water general permits for large construction activities regulated under Phase I. *For more information about a particular regional or state program or permit, contact the appropriate EPA regional office or state agency by using AGC's storm water contact information available online at [www.constructionenvironment.org](http://www.constructionenvironment.org).*

*Note: EPA and state regulatory agencies are not the only entities concerned with the discharge of pollutants from construction sites. Construction site operators should check with state land conservation districts, local agencies, city zoning authorities, and county administrators for any additional pollution prevention and storm water discharge requirements.*

## **9. WHAT IS A STORM WATER POLLUTION PREVENTION PLAN?**

A storm water pollution prevention plan (SWPPP) describes how the operator(s) will satisfy the storm water permit requirements for preventing and controlling pollutants in construction site runoff. Several items are required in an SWPPP, including: site maps showing drainage and discharge locations, and the locations of control measures; a description of the site and of the pollution prevention best management practices (BMPs) (i.e., erosion and sediment controls); and inspection and maintenance procedures and reports.

EPA's storm water regulations do not require the owner of a site to prepare the SWPPP. Therefore, the general contractor may be required by the contract to carry out these functions. Contractors must be familiar with how to develop a SWPPP. Guidance on SWPPP development and implementation of appropriate best management practices is available from EPA and most states. *For a list of EPA and state BMP manuals available on the Internet, see AGC's Environmental Services webpage at [www.constructionenvironment.org](http://www.constructionenvironment.org) (website address follows the manual's name).*

## **10. ARE THERE NEW NATIONAL EROSION AND SEDIMENT CONTROLS IN THE WORKS?**

Pursuant to a court order, EPA has begun drafting a rule that would require contractors to meet minimum design and maintenance requirements for erosion and sediment controls chosen by the Agency to control storm water runoff during and after construction. The new requirements—known as effluent limitation guidelines (ELGs)—may dictate the selection and level of performance required of best management practices (BMPs) used on construction job sites greater than one acre. Eventually, ELGs would be incorporated into all federal and state permits for the discharge of storm water from construction activity.

Currently, storm water permits require operators to develop storm water pollution prevention plans that include BMPs. However, the selection, design, and maintenance of the BMP are at the discretion of the operator (in conformance with applicable state and local requirements).

AGC is leading an industry-wide effort to protect contractors from excessive controls that could cost construction firms thousands of dollars each year and put a significant percentage of small firms out of business. AGC intends to demonstrate that EPA has grossly overestimated the benefits of a national ELG rule and that pollution controls under the storm water program sufficiently regulate runoff from construction sites. *For more information, visit AGC's Environmental Services webpage at [www.constructionenvironment.org](http://www.constructionenvironment.org) and click on the "Water Resources" link.*

## **11. DOES EPA ACTIVELY ENFORCE ITS STORM WATER RULES?**

EPA recently published an enforcement alert stating that the Agency is currently focusing its enforcement efforts on large construction sites discharging storm water without a permit, and on construction sites that hold a permit, but do not comply with permit requirements. In addition to other enforcement remedies, EPA may seek civil penalties for noncompliance of up to \$27,500 per day for each day of violation. *A copy of EPA's Enforcement Alert is available on the Internet at [www.epa.gov/oeca/ore/enfalert](http://www.epa.gov/oeca/ore/enfalert).*

## **AGC STORM WATER RESOURCES**

### **AGC PROVIDES STORM WATER COMPLIANCE TOOLS.**

AGC recently added a new book to its publications library called *Designing for Effective Sediment and Erosion Control on Construction Sites*. This book provides contractors, developers, and designers with proven and practical methods for minimizing erosion and sedimentation on construction sites. It lists basic cost-effective steps for installing, maintaining, and inspecting erosion and sediment controls to avoid fines and achieve regulatory compliance. The book also contains dozens of illustrated diagrams and planning tools that can be put to use immediately and identifies the limited practicality of certain best management practices. *To order the new AGC publication, which costs \$65.00 for members and \$97.50 for nonmembers, call (800) AGC-1767.*

### **ONE-DAY STORM WATER CLASS NOW AVAILABLE.**

AGC is determined to make sure that its members are among the first to understand and appreciate the wide-reaching ramifications of the second phase of the storm water program. Over the past year, AGC has been working with the International Erosion Control Association (IECA) to design a storm water seminar specifically for the construction industry. The new seminar—called *How to Select, Install and Inspect Construction Site Erosion and Sediment Control Best Management Practices for NPDES Storm Water Permit Compliance*—will be offered at various locations throughout 2002. Attendees will gain the tools needed to comply with the new Phase II storm water regulations. AGC and IECA members will receive the same discount rate of \$195. *Contact AGC's Loren Sweatt at (703) 837-5360 or via e-mail at [sweattl@agc.org](mailto:sweattl@agc.org) for additional information.*

### **DISCOVER AGC'S ENVIRONMENTAL SERVICES WEBPAGE.**

AGC has consolidated all of the environmental material on its website into one section—called “Environmental Services”—plus we have added lots of new links. Log on to the Internet at [www.constructionenvironment.org](http://www.constructionenvironment.org) where you will find environmental bulletins, newsletter articles, and regulatory comments on the latest environmental regulations and compliance strategies for AGC contractors. Other links provide information on how to join AGC's Environmental E-Forum, an electronic e-mail system dedicated to the discussion of environmental issues as they pertain to the construction industry, and how to participate in AGC's Environmental Resources Committee. In addition, valuable links to storm water resources and wetlands permit guidance will provide you with information on how to obtain and comply with permits required by the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers.

### **FREE CONSTRUCTION MANAGEMENT ADVICE.**

AGC contractor members are qualified to receive complimentary subscriptions to *GRADING & EXCAVATION CONTRACTOR*, *STORMWATER*, and *EROSION CONTROL* magazines.

- ✓ *GRADING & EXCAVATION CONTRACTOR*—This magazine is written for contractors involved in excavating, grading, mining, and other earthmoving activities. It focuses on the management of such projects, as well as the equipment and tools involved. ([www.gradingandexcavating.com](http://www.gradingandexcavating.com))
- ✓ *STORMWATER*—The increasing regulations and rules regarding protection of surface water quality will significantly impact the construction industry. This magazine is designed to keep contractors, and other professionals, up-to-date on regulatory issues and provide detailed information on construction practices that most effectively deal with storm water-related issues. ([www.stormh2o.com](http://www.stormh2o.com))
- ✓ *EROSION CONTROL*—Is written for contractors involved in any activities that may disturb the vegetative cover and thus potentially create increased soil erosion and sedimentation. ([www.erosioncontrol.com](http://www.erosioncontrol.com))

All three magazines are published seven times a year. To request a free subscription, either: (1) fill out an online subscription form (log on to the publication's website and follow the steps indicated when you click on "subscribe"), or (2) fill out a subscription card and mail or fax it back (call 800-546-4679 and request a sample copy of the magazine and a complimentary subscription card). *For more information, contact Dan Waldman of Forester Communications at (805) 681-1300.*

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